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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-377

ALDEN G. DAVIS  
4137 61<sup>st</sup> Street  
Los Angeles, California 90043

**STATEMENT OF ISSUES**

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, (Board) Department of Consumer Affairs.

2. On or about April 27, 2006, the Board received an application for a Respiratory Care Practitioner License from Alden G. Davis (Respondent). On or about April 3, 2006, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 21, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless

1 otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of California,  
3 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the  
4 Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend, and  
6 revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3732, subdivision (b) of the Code states:  
8           “The board may deny an application, or may order the issuance of a license  
9 with terms and conditions, for any of the causes specified in this chapter for  
10 suspension or revocation of a license, including, but not limited to, those causes  
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

12          7.       Section 3750 of the Code states:  
13          “The board may order the denial, suspension or revocation of, or the  
14 imposition of probationary conditions upon, a license issued under this chapter, for  
15 any of the following causes:

16          “ . . .

17          “(d) Conviction of a crime that substantially relates to the qualifications,  
18 functions, or duties of a respiratory care practitioner. The record of conviction or a  
19 certified copy thereof shall be conclusive evidence of the conviction.

20          “ . . .

21          “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
22 substantially related to the qualifications, functions, or duties of a respiratory care  
23 practitioner.

24          “ . . . .”

25          8.       Section 3752 of the Code states:  
26          “A plea or verdict of guilty or a conviction following a plea of nolo  
27 contendere made to a charge of any offense which substantially relates to the  
28 qualifications, functions, or duties of a respiratory care practitioner is deemed to be

1 a conviction within the meaning of this article. The board shall order the license  
2 suspended or revoked, or may decline to issue a license, when the time for appeal  
3 has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
4 order granting probation is made suspending the imposition of sentence, irrespective  
5 of a subsequent order under Section 1203.4 of the Penal Code allowing the person  
6 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
7 the verdict of guilty, or dismissing the accusation, information, or indictment.”

8 9. California Code of Regulations, Title 16, section 1399.370, states:

9 “For the purposes of denial, suspension, or revocation of a license, a crime  
10 or act shall be considered to be substantially related to the qualifications, functions  
11 or duties of a respiratory care practitioner, if it evidences present or potential  
12 unfitness of a licensee to perform the functions authorized by his or her license or in  
13 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts  
14 shall include but not be limited to those involving the following:

15 “ . . .

16 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

17 “(c) Conviction of a crime involving driving under the influence or reckless  
18 driving while under the influence.

19 “. . . .”

#### 20 COST RECOVERY

21 10. Section 3753.5, subdivision (a) of the Code states:

22 "In any order issued in resolution of a disciplinary proceeding before the  
23 board, the board or the administrative law judge may direct any practitioner or  
24 applicant found to have committed a violation or violations of law to pay to the  
25 board a sum not to exceed the costs of the investigation and prosecution of the  
26 case."

27 11. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution

1 shall include attorney general or other prosecuting attorney fees, expert witness fees,  
2 and other administrative, filing, and service fees."

3 12. Section 3753.1, subdivision (a) of the Code states:

4 "An administrative disciplinary decision imposing terms of probation may  
5 include, among other things, a requirement that the licensee-probationer pay the  
6 monetary costs associated with monitoring the probation."

7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Conviction of a Crime)

9 13. Respondent's application is subject to denial under Code sections  
10 3750, subdivisions (d) and (j), 3752, and California Code of Regulations, Title 16, section  
11 1399.370, subdivisions (b) and (c), in conjunction with section 3732, subdivision (b), in  
12 that respondent was convicted of crimes substantially related to the qualifications, functions  
13 and duties of a respiratory care practitioner. The circumstances are as follows:

14 April 25, 2005 Conviction

15 A. On or about January 20, 2005, in Los Angeles County Superior  
16 Court Complaint No. 5MT00076, Respondent was charged with violating Vehicle  
17 Code sections 20002(a), hit and run driving/property damage (Count 1); 14601.5(a),  
18 driving with a suspended/revoked license (Count 2); 14601.1(a), driving with a  
19 suspended license (Count 3); 12500(a), unlicensed driver (Count 4); and 16025(a),  
20 failure to provide proof of financial responsibility (Count 5).

21 B. On or about April 25, 2005, pursuant to a negotiated plea agreement,  
22 Respondent was convicted upon his plea of nolo contendere to hit and run  
23 driving/property damage (Count 1), and driving with a suspended license (Count 3).  
24 Proceedings were suspended. As to Count 1, Respondent was placed on probation  
25 for 3 years with various terms and conditions. The court ordered him to pay fines  
26 and assessments in the amount of \$1,126.00, or serve 10 days in county jail, or  
27 perform 10 days of Cal Trans. Pursuant to the negotiated plea agreement, Counts 2,  
28 4 and 5 of the complaint were dismissed. As to Count 3, on or about June 1, 2005,

1 Respondent was placed on probation for 3 years with various terms and conditions.  
2 He was ordered to pay fines and assessments in the amount of \$1,633.00, or serve  
3 17 days in jail, or perform 22 days of Cal Trans.

4 March 14, 2005 Conviction

5 C. On or about May 9, 2004, a California Highway Patrol officer  
6 responded to a report of a traffic collision. Upon contact with Respondent, the  
7 officer noticed his breath and person had a strong odor of alcohol, his eyes were red  
8 and watery, and his speech was slow and slurred. Respondent stated he had drunk  
9 two bottles of beer and one shot (1.5 ounces) of tequila at a party. He failed to  
10 successfully complete the field sobriety tests. The results of Respondent's breath  
11 test indicated his blood alcohol level was .10%.

12 D. On or about September 2, 2004, in Los Angeles County Superior  
13 Court Complaint No. 4WL12173, Respondent was charged with violating Vehicle  
14 Code sections 23152(a), driving under the influence of alcohol (Count 1), and  
15 23152(b), driving with .08% or higher blood alcohol level (Count 2).

16 E. On or about March 14, 2005, the complaint was amended to add  
17 reckless driving with no injury involving alcohol/drugs, in violation of Vehicle  
18 Code section 23103 (Count 3). On or about March 14, 2005, pursuant to a  
19 negotiated plea agreement, Respondent was convicted upon his plea of nolo  
20 contendere to reckless driving with no injury involving alcohol/drugs (Count 3). He  
21 was placed on probation for two years with the following terms and conditions,  
22 among others: pay fines and assessments of \$1,044.00, and complete a three-month  
23 licensed first offender alcohol program. Pursuant to the negotiated plea agreement,  
24 Counts 1 and 2 of the complaint were dismissed.

25 September 25, 1996 Conviction

26 F. On or about September 19, 1996, in Los Angeles County Municipal  
27 Court Complaint No. 6WL03597, Respondent was charged with theft, in violation  
28 of Penal Code section 484(a), following his arrest on or about September 4, 1996.

1           G.     On or about September 25, 1996, Respondent was convicted upon his  
2     plea of nolo contendere. He was placed on probation for eighteen months with the  
3     following terms and conditions, among others: pay fines and assessments in the  
4     amount of \$602.00, and perform 81 hours of community service.<sup>1</sup>

5                     SECOND CAUSE FOR DENIAL OF APPLICATION

6                     (Commission of a Fraudulent, Dishonest, or Corrupt Act)

7           14.     Respondent's application is subject to denial under Code section  
8     3750, subdivision (j), in conjunction with section 3732, subdivision (b), in that he  
9     committed a fraudulent, dishonest or corrupt act that is substantially related to the  
10    qualifications, functions, or duties of a respiratory care practitioner.

11           A.     The facts and circumstances, set forth in Paragraph 13, subparagraphs  
12    F and G, are incorporated herein by reference.

13           B.     On or about April 27, 2006, the Board received an application for  
14    licensure as a respiratory care practitioner from respondent. Question 19 of the  
15    application required respondent to state whether he had ever been arrested, charged  
16    or convicted or had a conviction expunged, dismissed or reduced or diverted by the  
17    court. Respondent answered "No" to this question. On or about April 3, 2006,  
18    Respondent signed a certification in the application declaring under penalty of  
19    perjury that all information he had supplied on the application was true and correct.  
20    As respondent was well aware at the time he signed this certification, his answer to  
21    Question 19 was false by virtue of his conviction for theft set forth in Paragraph 13,  
22    subparagraphs F and G above.

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28           1. This conviction was later dismissed pursuant to Penal Code section 1203.4

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Alden G. Davis for a Respiratory Care Practitioner License;
2. Directing Alden G. Davis to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 6, 2007

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant